

HAYNES BOONE

HB

October 11, 2023

Via ECF

The Hon. Judge John P. Cronan
United States District Court
Southern District of New York
500 Pearl Street, Room 1320
New York, New York 10007

The Hon. Judge Katharine H. Parker
United States Magistrate Judge
District Court for the Southern District of New York
500 Pearl Street, Room 750
New York, New York 10007

Re: *GMO Gamecenter USA, Inc., et al. v. Whinstone US, Inc.*, No. 1:22-cv-5974.

Dear Judge Cronan and Magistrate Judge Parker:

Pursuant to Federal Rule of Civil Procedure (“F.R.C.P.”) 15(a)(2) and the Hon. Judge Katherine H. Parker’s Order dated August 23, 2023, counsel for Plaintiffs GMO Gamecenter USA, Inc. and GMO Internet Group, Inc. (collectively, “GMO”) hereby submits GMO’s unopposed request for leave to file a Fourth Amended Complaint (the “FAC”). The FAC is attached hereto as **Exhibit A**, and a redline demonstrating the changes made from the Third Amended Complaint is attached hereto as **Exhibit B**.

Rule 15(a)(2) provides that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Under this standard, “amendment to a pleading is generally denied only when there are concerns of ‘bad faith, undue delay, or undue prejudice to the opposing party.’” *See Savor Health, LLC v. Day*, No. 19-CV-9798, 2022 WL 1500782, at *1 (S.D.N.Y. May 12, 2022) (quoting *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007)).

GMO notified Whinstone and the Court of GMO’s intention to file the FAC at the August 22, 2023 status conference, after which the Court ordered the parties to meet and confer in an effort to determine if Whinstone would consent to GMO’s filing of the FAC. *See* ECF No. 89. The parties conferred as directed by the Court, and as discussed at the October 4, 2023 status conference, Whinstone consents to GMO’s filing of the FAC while reserving all rights with regard to Whinstone’s response to the FAC, and on the condition that GMO agree Whinstone may respond to the FAC within 30 days after it is filed. GMO consented to Whinstone’s request, and as a result, Whinstone consented to GMO’s filing of the FAC.

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Given Whinstone's consent and the lack of any bad faith, undue delay, or undue prejudice, the circumstances support granting leave for GMO to file the FAC. Accordingly, GMO respectfully requests that the Court grant leave for GMO to file the FAC.

Very truly yours,



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